

APPROVED: Meeting No. 39-89

ATTEST: *Sharon A. Gran*

MAYOR AND COUNCIL
ROCKVILLE, MARYLAND
Meeting No. 38-89

August 7, 1989

The Mayor and Council of Rockville, Maryland, convened in General Session in the Council Chamber, Rockville City Hall, Maryland Avenue at Vinson Street, Rockville, Maryland, on August 7, 1989, at 7:30 p.m.

PRESENT

Mayor Douglas M. Duncan

Councilmember Steve Abrams

Councilmember James Coyle

Councilmember Viola Hovsepian

Councilmember David Robbins

In attendance: City Manager Bruce Romer, City Clerk Sharon Gran and Assistant City Attorney Sondra Block.

Re: City Manager's Report

1. The Maryland Municipal League Award for Excellence for the gas/fuel recovery system which was presented to the Mayor at the Summer Conference has been transmitted to the area of Public Works where the employees involved in the program are located.

2. The telecommunications study is underway and the consultants, Laventhol and Horwath, will be meeting with staff in the coming weeks.

3. There is a minor change in Agenda Item No. 9 (the Charter Amendment to provide for a one-quarter year tax levy) since its introduction, and the change is reflected with double underlining.

4. At least ten neighborhoods are planning some type of observance for "National Night Out" on August 8.

Councilmember Abrams noted that Horizon Hill's activities were being held

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outside the City limits at a M-NCPPC facility because the equipment has been removed from their recreation park area and is being replaced with new, safer equipment. He requested that the Mayor and Council be provided with a status report on park renovations in the City and that this information be circulated to the residents in the next Rockville Reports.

5. The City is participating with Montgomery County in the damage assessment appeal with FEMA resulting from the storm damage which occurred on June 14 and 15. Fortunately, the financial impact to the City of Rockville is negligible. Montgomery County officials complimented the City for police services provided to fill the gap when Montgomery County officers had to go elsewhere and for the direct assistance provided to the Town of Chevy Chase.

6. The Farmers Market continues to be very successful. A major public relations effort is underway as part of the Montgomery County Fair coming up later this month. WINX will include radio spots in its live broadcasts from the fair and promotional materials for the market will be distributed in WINX's packets.

Discussion followed regarding how long the Farmers Market would operate and the impact to the City's subsidy program given the success of the market. Staff responded that the market will probably operate into October and that an economic analysis would best be done when the cycle is complete.

Re: Proclamation declaring August
8, 1989, as "National Night
Out"

Proclamation No. 18-89

By a unanimous vote of the Mayor and Council, August 8, 1989, was declared "National Night Out." The Proclamation, the full text of which can be found in Proclamation File No. 4 of the Mayor and Council, was presented to Anne Hedian and other members of the Rockville Watch Steering Committee.

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The National Night Out program recognizes the importance of community crime prevention efforts in promoting the safety and well-being of our citizens.

Re: Appointments

Upon motion of Councilmember Abrams, duly seconded and unanimously passed, Karen Boujoukos was appointed to a two-year term on the Advisory Commission on Public Education.

Upon motion of Councilmember Hovsepian, duly seconded and unanimously passed, Harriet Margolis was appointed to a two-year term on the Economic Development Council as a Chamber appointment.

Upon motion of Councilmember Abrams, duly seconded and unanimously passed, Thomas Shih was reappointed and Maura O'Melia Bowen and Carol Hannaford were appointed to four-year terms on the Human Rights Commission.

Re: Approval of Minutes

Upon motion of Councilmember Abrams, duly seconded and unanimously passed, the minutes of Meeting No. 37-89 (July 31, 1989) were approved, as written.

Re: Citizens' Forum

At this time, the Mayor opened the meeting to hear from any citizen who wished to address the Mayor and Council.

1. Bernard Black, owner of 13 units in the 200 block of N. Adams Street, expressed his concern regarding comments that were made by a member of the Planning Commission with respect to downzoning from O-2 to residential the units in the 200 block of N. Adams Street. Mayor Duncan noted that the comments were made during a worksession with the Planning Commission at which time members were asked to comment on items not included in the approved West End Plan, and this is the context in which the downzoning comments were made.

2. Leah Barnett, 19 Orchard Way North, informed the Mayor and Council that

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they would be receiving invitations to a Southern Lawn Brunch on September 10 at the Civic Center benefitting the Rockville Scholarship Foundation.

Regarding the improvements continuing on Falls Road, Mrs. Barnett stated that on one side of I-270 there is a huge collection of heavy wires that crosses Falls Road and looks very dangerous. Some wires are attached to one pole which is in the middle island, and Mrs. Barnett asked if this was going to remain when construction is completed.

Mayor Duncan stated that information responding to this issue will be transmitted to Mrs. Barnett. Discussion then followed regarding the use of temporary signs to ease the confusion experienced by motorists along Falls Road, particularly at Ritchie Parkway and Fallsmead Road. The City Manager noted that staff will check into this matter.

There being no other citizen wishing to be heard, the Mayor closed the Citizens' Forum portion of the meeting.

Re: Staff Report regarding Board
of Appeals

In response to concerns raised at an earlier meeting regarding the Board of Appeals, the Mayor and Council asked the City Manager and City Attorney to review the allegations of two individuals regarding the grant of a variance to their neighbor for the construction of a garage. The City Manager noted that he and the City Attorney had met with staff and the members of the Board of Appeals and a report dated August 1, 1989, has been transmitted to the Mayor and Council indicating that they believe that the proceedings employed by the Board of Appeals were not in any way improper and that their private deliberations were legal.

Councilmember Abrams thanked the City Manager for the report and stated that he would like copies made available to the press. He commented that he is very comfortable with the caliber of work being done by the members of the Board of Appeals

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and that he feels there was a misunderstanding on the part of the complainants as to how the process works rather than actions of the Board of Appeals itself. Councilmember Abrams went on to state that this particular case involved a variance for a garage and if a court of law were to ever question the use of variance procedures, he would be open to seeking legislative changes at the state level to try to clarify the standard of variance in these kinds of circumstances.

Discussion followed regarding training and orientation of new members of the Planning Commission, Historic District Commission and the Board of Appeals, and it was noted that an ongoing training package from ICMA is now available. Mayor Duncan emphasized that a year ago, these three boards and commissions did receive training which included ex parte communication. He also indicated that he felt it is appropriate for the Board of Appeals to meet in executive session. It was noted by Mayor Duncan that copies of this report were to be sent to Messrs. Clough and Marks and the Board of Appeals the following day.

Re: Consent Agenda

Upon motion of Councilmember Coyle, duly seconded and unanimously passed, the following Consent Agenda Items were approved:

- A. Award of Bid 10-90, annual traffic signal maintenance contract, to Hawkins Electric Company for its bid of \$44,713

This contract provides for routine maintenance of 20 City traffic signals and five SHA traffic signals (for which the City is reimbursed).

- B. Award of Bid 12-90 to S. Rock/Estabrook Corp. for furnishing and installation of street lights on W. Ritchie Parkway from Falls Road to Seven Locks Road for its low bid of \$57,353.

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This project, a component of the recent dualization of this section of W. Ritchie Parkway, is intended to improve traffic safety and enhance personal security in the area.

- D. Approval of waiver for on-site Storm Water Management for the property at Dogwood Park in the Cabin John drainage area, and acceptance of a \$22,540 contribution for the off-site SWM fund.

The developer, the Department of Recreation and Parks, plans the construction of additional parking areas.

- E. Award of Council of Governments Annual Cooperative Bid for Rockville for 50,000 gallons of diesel fuel to Phoenix Petroleum Company at their low bid of \$0.5099 per gallon.

- G. Approval of "Declaration of Dedication" for recordation among the land records of Montgomery County.

The declaration will dedicate a strip of City property at the end of Woodburn Road as a right-of-way.

- H. Staff recommendation to prepare an ordinance amendment to allow extension of time for connection to sanitary sewer system.

In conjunction with a proposed annexation of a single-family dwelling, a request has been made to extend the time available for connection to the City's sanitary sewer system.

Re: Award of Bid 17-90 to Record Printing Co. for printing of the Rockville newsletter for the low bid of \$24,197.06, to include items one through seven and excluding items eight and nine.

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The bid includes printing of 26 editions of Rockville Reports and includes preparation for mailing. The FY1990 budget is \$24,150, with the shortfall of \$47.06 to be absorbed by PIO's budget. The excluded options are for 12-page editions.

Councilmember Robbins noted that the quality of photographs reproduced for Rockville Reports is poor, and he asked staff to comment on the new specifications for photographs and anticipated improvements of quality. Staff noted that a new process would be used for inserting the photos into the newsletter, and the printer feels that this process will improve the quality of the photos.

Upon motion of Councilmember Abrams, duly seconded and unanimously passed, Award of Bid 17-90 to Record Printing Company in the amount of \$24,197.06 was approved.

Re: Approval of "Offer of Agreement" with SDS Builders General Partnership and Sonny Decesaris and Sons Builders, Inc.

This contract is for the purchase of a right-of-way needed for the relocation and extension of Fleet Street as per CIP Project No. 8C11. The purchase price is \$345,000.

Councilmember Abrams questioned whether this was the last piece of property to be acquired for the Fleet Street extension and asked the time frame for completion. Staff responded that this is the last piece to be acquired and that the project is slated for construction in FY1991.

Upon motion of Councilmember Abrams, duly seconded and unanimously passed, the offer of agreement with SDS Builders General Partnership and Sonny Decesaris and Sons Builders, Inc. was approved.

Re: Adoption of Resolution to amend Sections 7 and 8 of Article VII, "Finance," of the Charter of the City of Rockville so as to provide for a one-quarter year property

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tax levy and such other periodic property tax levies as may be authorized by state law; to clarify provisions relating to the rate of interest for payment of late taxes, and to make other clarifying technical amendments.

Resolution No. 22-89

Upon motion of Councilmember Abrams, duly seconded and unanimously passed, the resolution was amended to include the words "or by City ordinance or resolution" at the end of the first sentence in Section 8. Upon motion of Councilmember Coyle, duly seconded and unanimously passed, Resolution No. 22-89, as amended, the full text of which can be found in Resolution Book No. 9 of the Mayor and Council, was adopted to amend Sections 7 and 8 of Article VII, "Finance" of the Charter of the City of Rockville so as to provide for a one-quarter year property tax levy and such other periodic property tax levies as may be authorized by state law.

Re: Adoption of Resolution to establish a new fee schedule for licensing of rental units within the City.

Resolution No. 23-89

Councilmember Abrams moved adoption of this resolution for discussion purposes and asked if the revised approach for assessing licensing fees had been discussed with representatives of the Board of Realtors. Mayor Duncan stated that he had been advised by Board representatives that they had no problems with the fee structure as revised.

The fact that the fee covers the initial license inspection and one reinspection for code compliance was clarified. Councilmember Abrams noted that he would be curious to see how the cost recovery works out once the City has some experience with this new fee schedule.

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Upon motion of Councilmember Abrams, duly seconded and unanimously passed, Resolution No. 23-89, the full text of which can be found in Resolution Book No. 9 of the Mayor and Council, was adopted to create a reinspection fee schedule for dwellings requiring multiple inspections for code compliance and a moderately increased licensing fee for all rental units in the City.

Re: Adoption of resolution with fee increases for electrical permits, as approved at the July 24, 1989, Mayor and Council meeting.

Resolution No. 24-89

This resolution includes fee increases which were inadvertently omitted from a resolution adopted on July 24, 1989, providing for increases in the building, plumbing, mechanical and electrical permit fees charged by the Division of Licenses and Inspection. Upon motion of Councilmember Hovsepian, duly seconded and unanimously passed, Resolution No. 24-89, the full text of which can be found in Resolution Book No. 9 of the Mayor and Council, was adopted to provide for fee increases for electrical permits.

Re: Adoption of Ordinance to amend Chapter 11, Section 11-1.01A of the "Laws of Rockville" so as to amend the provisions for parking permit areas to allow minor modifications to be made to existing permit parking areas without holding a public hearing.

Councilmember Abrams noted that the primary issue is the appropriate threshold for minor modifications; that it is difficult to work on a percentage level but that five or fewer households did not seem appropriate if you are extending the area for a block. Depending upon the size of the permit parking district, what is considered a minor modification may vary. Following discussion, it was agreed that the ordinance would be amended to provide for a threshold of six or fewer households as the definition of a

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minor modification and notice of any proposed additions or deletions to the permit parking area be given to adjacent homeowners both within and outside the existing permit parking district. It was further clarified that the Mayor and Council would reserve the right to make a decision as to whether or not to conduct a public hearing. Staff will prepare the modifications and the ordinance to be placed on the September 11, 1989 consent agenda.

Re: Discussion and Instructions
to Staff - Text Amendment
Application T-93-89, Mayor
and Council of Rockville,
Applicant.

Adoption of this text amendment would modify the definitions section of the Zoning Ordinance to eliminate retailing as an "accessory use" and to add a definition for "delicatessen/carry-out." Additional permitted uses are proposed for the I-1, Service Industrial Zone, and other zones. Upon motion of Councilmember Hovsepien, duly seconded and unanimously passed, staff was instructed to prepare this text amendment for adoption by the Mayor and Council consistent with the recommendations of the Planning Commission.

Re: Discussion and Instructions
to Staff - Text Amendment
Application T-95-89, Mayor
and Council of Rockville,
Applicant.

Upon motion of Councilmember Abrams, duly seconded and unanimously passed, staff was instructed to prepare this text amendment for adoption by the Mayor and Council to amend the Zoning Ordinance to add a definition for "health professional" and to substitute health professional for medical practitioners in the definition of "home occupation."

Re: Discussion and Instructions
to Staff - Application to
Close and Abandon Public Way,
SCA-58-89, Irwin Cooperman,
Applicant.

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The applicant requests abandonment of a public alley right-of-way running between Church Street and Hungerford Drive. Councilmember Coyle asked if all parties had agreed to this proposed abandonment. Mayor Duncan responded that a letter had been received from Mr. Lynott, attorney for Mr. Whalen, indicating approval, with conditions, and Stephen Elmendorf, attorney for United Broadcasting (WINX), had noted their approval at the public hearing. Mr. Cooperman provided clarification as to the exact location of the public way proposed to be abandoned. Councilmember Abrams asked what would happen to this right-of-way if the contract for sale is not completed and the property reverts back to the current property owner. Staff responded that there are easement requirements in favor of Whalen's property at One Church Street and WINX, and it was stated that these easements are a condition precedent to abandonment.

Upon motion of Councilmember Abrams, duly seconded and unanimously passed, staff was instructed to prepare Application SCA-58-89 for approval by the Mayor and Council, subject to the conditions set forth by Whalen and WINX.

Re: Discussion and Instructions
to Staff - West-End Woodley
Gardens East\West Neighborhood
Plan.

This is a comprehensive neighborhood plan developed and approved by the Planning Commission for the Planning Area 4 neighborhood study area. Following discussions regarding issues raised at the worksession on July 19, the Mayor and Council made the following decisions:

- to leave the bikeways as they are currently planned;
- with three in favor and two opposed, the properties at 14 and 16 Beall Avenue shall remain residential;
- the properties at 201-249 North Adams Street shall remain in the O-2 Zone;

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- staff will explore non-traditional options in their review of the TCO-1 Zone and whether or not the Mayor and Council can become involved in land acquisition and development in a quasi-judicial and quasi-proprietary capacity;

- leave the RTH designation for the Haiti-Martins Lane property;

- remove the note regarding secondary access to Chestnut Lodge site;

- reevaluation of the designation of Beall Avenue as a primary residential street will be addressed in connection with a Master Plan update.

Staff was instructed to prepare the West End Plan for adoption by the Mayor and Council at the meeting of September 11 according to the Plan approved by the Planning Commission and with the changes as noted above.

Re: Discussion and Instructions
to Staff - Zoning Map Amendment
Application M-54-89, Joseph
A. Lynott, Attorney for Peter
J. and Mayda Tzakins,
Applicant.

The applicant requests a zoning change for a lot at 14 Beall Avenue from the R-60, One-Family Detached Residential, to the O-2, Transitional Office Zone. It was discussed and clarified by the Assistant City Attorney that the Mayor and Council have the authority to rezone even in contravention of the Master Plan. Councilmember Abrams moved to instruct staff to prepare Zoning Map Amendment Application M-54-89 for approval by the Mayor and Council, said motion failing for lack of a second. Upon motion of Councilmember Coyle, duly seconded, with a vote of four in favor and one opposed, staff was instructed to prepare a resolution for denial of Zoning Map Amendment Application M-54-89.

Councilmember Abrams expressed serious reservations regarding the actions of one Planning Commission member and noted that it would be more prudent to grant the application. He disagreed with the instructions to deny, noting his concern that this

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action may leave the City open to a legal challenge. Mayor Duncan noted that he had spoken with the City Attorney and was advised that there would be no problems in denying this application. A memo from the City Attorney to this effect would be forthcoming prior to final action by the Mayor and Council.

Re: Discussion and Instructions
to Staff - Goals Task Force
Report on the Revised Goals
for the City of Rockville.

Councilmember Abrams recommended that Discussion and Instructions to staff be deferred until the public record is closed in this matter, i.e., September 14, 1989, so as not to stifle additional comments. It was agreed that this item would be delayed and that any additional issues or concerns of the Mayor and Council should be transmitted to staff so that research can be done now.

Re: FYI/Correspondence

Councilmember Hovsepian noted that Susan Straus of the Public Works Department has received her Professional Engineer's license. It was also noted that Officer Marlene Yaksetic of the City Police Department is the first City officer to be invited to instruct at the new police recruit class at the Montgomery County Police Academy.

With respect to the Maryvale II Stormwater Management project, Mayor Duncan requested an analysis of what the effect is on the ballfield and asked that this information be transmitted to Mrs. Hedian of the East Rockville Civic Association.

Regarding the Falls Road and Kersey Lane intersection, a letter has been received from the Secretary of State indicating that the state will perform another study after the interchange is completed. The Mayor asked that this information be transmitted by letter to the surrounding neighbors.

Mayor Duncan noted the correspondence from Rockville Arts Place regarding the sculpture exhibit in Metro Center. The letter received from Jane Pontius complimenting

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the recreation program at Monument Park was also mentioned.

Re: New Business

Councilmember Hovsepian sought the concurrence of the Mayor and Council to instruct staff to look at recycling and what can be done to continue the program, especially the yard waste, and enlarging the program to include all of Rockville. Mr. Romer responded that staff is not in a position to respond at this time; that the success of the City program is dependent upon an ultimate source for the yard waste. Mayor Duncan asked staff to come back with further information at a later time.

Re: Executive Session

The Mayor and Council convened in executive session at 9:08 p.m. to discuss property matters.

Re: Adjournment

There being no further business to come before the Mayor and Council, the meeting was adjourned at 9:43 p.m., to convene again in General Session at 7:30 p.m. on September 11, 1989, or at the call of the Mayor.